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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,236	09/17/2003	Sandra M. Maclean	11842/US/2	5239

25763 7590 09/29/2009

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

09/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/664,236

Applicant(s)

MACLEAN ET AL.

Examiner

Lynne Anderson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 10-31 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) 10-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-31 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the Appeal Brief filed on 17 April 2009, PROSECUTION IS HEREBY REOPENED.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761.

Response to Arguments

2. Applicant's arguments that Schumacher fails to disclose a pad having a bottom layer and a top layer have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Friedbauer et al. (2001/0032712).

3. Applicant's arguments filed 17 April 2009 have been fully considered but they are not persuasive.
4. With respect to the rejection under 35 U.S.C. 112, 1st paragraph, the applicant's argument that the disclosure in the present specification of a pad having a bottom layer comprising thick polypropylene material expressly or inherently supports the claimed limitations is not persuasive. As the applicant states on page 16 of the Appeal Brief dated 17 April 2009, polypropylene may be permeable depending on its configuration, and therefore it is not inherent to the disclosure of the present specification that the polypropylene backing is impermeable or will protect from fluids that soak through. Therefore, the rejection under 35 U.S.C. 112, 1st paragraph, stands.
5. With respect to the applicant's argument that the towels disclosed by Schumacher cannot fulfill the claimed under pad and sanitary napkin, since the present claims already disclose a towel, it is noted that Schumacher discloses multiple towels, as shown in figure 1, which are each capable of performing a different function.
6. With respect to the applicant's argument that Schumacher fails to disclose a specimen pan, it is noted that the scoop disclosed by Schumacher has the open-topped configuration of a pan and is of a sufficient size to hold human tissue. Neither the present claims or specification require the specimen pan to be enclosed on all sides, and the open side of the scoop taught by Schumacher does not prevent the scoop from holding items such as human tissue. Therefore the scoop of Schumacher fulfills the claimed limitations.

7. With respect to the applicant's argument that the container of Schumacher is not large enough to contain the expected amount of fetal remains, it is noted that neither the size of the container nor the amount of fetal remains it must hold are disclosed in the present claims. The container of Schumacher is fully capable of holding some amount of fetal remains, and therefore fulfills the claimed limitations.

Specification

8. The amendment filed 17 June 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The pad having a bottom layer that protects the surface from bodily fluids that soak through the top layer is not supported in the present specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1, 25-31, 35-37, and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The pad having a

bottom layer protects the surface from bodily fluids that soak through the top layer or is impermeable is not supported in the present specification. The present specification to not explicitly teach the pad having a bottom layer formed of an impermeable material, or the bottom layer providing protection against fluid that has soaked through the top layer. Therefore, these limitations are considered to be new matter.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1 and 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumacher (4,917,238) in view of Friedbauer et al. (2001/0032712).

13. With respect to claims 1 and 31, Schumacher discloses all aspects of the claimed invention with the exception of the under pad having a bottom layer and a top layer. Assuming the limitation "miscarriage" is given little patentable weight, Schumacher discloses a kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 1, lines 9-12; column 2, lines 6-7; figure 1) comprising a pad 52 having an absorbent surface (column 2, lines 45-47); a disposable absorbent towel 50 and sanitary napkin 51 (column 2, lines 45-47); disposable plastic gloves 57, 58 (column 2, lines 52-53); scoop/specimen pan 80; and container 64. The specimen pan 80 is fully capable of receiving human tissue, and the container 64 is fully capable of holding fetal remains.

14. Alternatively, assuming the limitation "miscarriage kit" is given patentable weight and is consistent with its plain ordinary meaning of expulsion of a fetus from the womb before it is able to survive independently (see Oxford online dictionary), regarding claim 1 Schumacher discloses a waste cleanup kit 10 for cleaning up body waste such as vomit, blood, feces and the like (column 1, lines 9-12; column 2, lines 6-7; figure 1) that is thus capable of being used as a miscarriage kit since the elements of the kit are fully capable of being used to clean up after a miscarriage.

15. Schumacher discloses the pad 52 is an absorbent paper towel, as disclosed in column 2, lines 45-47. Conventional absorbent paper towels comprise multiple layers, as taught by Friedbauer. Friedbauer discloses a paper towel comprising top and bottom layers, as shown in figure 2, to provide the towel with increased bulk and strength (paragraphs [0008] and [0010]).

16. It would therefore have been obvious to one of ordinary skill in the art at the time of invention to provide the paper towel of Schumacher with a top layer and a bottom layer, as taught by Friedbauer, to provide increased bulk and strength.

17. With respect to claim 25, the container 64 is spill-proof and sanitary since it has a cap 68 that confines the liquids (column 3, line 20).

18. With respect to claims 26-30, the kit further comprises label/list 63 (column 2, lines 64-68); two plastic bags 53, 54 (column 4, lines 47-48); germicidal hand wipe 7; and scraper 90 (column 3, lines 25 and 33-34).

19. Claims 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumacher (4,917,238) and Friedbauer et al. (2001/0032712), and further in view of Gordon (6,434,762).

20. Schumacher, as modified by Friedbauer, discloses a kit with a specimen pan 80 as disclosed above with respect to claim 1. Schumacher *does not expressly disclose* the pan is configured to fit inside the rim of a toilet. Gordon discloses a stool/waste collecting apparatus 10 secured to a toilet seat (column 2, lines 28-31) and having a receptacle/specimen pan 14 which fits inside the rim of a toilet (column 2, lines 46-55; figures 1-3) for depositing bodily waste without fear of touching the sample (column 3, lines 31-41). One would be motivated to modify the kit of Schumacher with the specimen pad of Gordon to improve the anti-contamination of the system since both references disclose apparatus to dispose of bodily waste. Therefore, it would be obvious to one of ordinary skill in the art at the time of invention to modify the kit, thus providing a specimen pan to fit inside a toilet rim.

21. With respect to the container being opaque, Schumacher further discloses a container 12, as shown in figure 2, formed from cardboard, as described in column 2, lines 8-9. Cardboard is an opaque material, and therefore Schumacher discloses a container that is opaque.

22. With respect to claims 36-37, the measurement guide is considered to be printed matter, which does not distinguish over the prior art when no new and unobvious functional relationship exists between the substrate and the printed matter (see MPEP 2112.01, III).

23. Claims 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schumacher (4,917,238) and Friedbauer et al. (2001/0032712), and further in view of Gallo et al. (6,622,856).

24. Schumacher, as modified by Friedbauer, discloses all aspects of the claimed invention with the exception of a thermometer. Gallo teaches a medical kit including a thermometer, as disclosed in column 5, line 25, for the monitoring of temperature. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the kit of Schumacher with a thermometer, as taught by Gallo, for the monitoring of temperature.

Conclusion

25. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761